

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
AUGUST 24, 2009**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, August 24, 2009 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair Rick Pinto, Russ Parmele, Clinton Turner, Scott Brewington, Ryan Shell, Cheryl Huffman. Staff present were Rawls Howard, Zoning Administrator and Loray Averett. Becky Jo Peterson Buie and Jim Clark, represented the City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Pinto also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Chair Pinto welcomed Cheryl Huffman as the Board's newest member.

APPROVAL OF MINUTES

Mr. Turner moved to approve the minutes of the July 27, 2009 meeting as written, seconded by Mr. Parmele. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

Derek Allen, attorney representing 2408 Retriever Lane, stated that he wished to ask for a continuance of BOA-09-29 to allow the possibility of swapping some land in regard to this request.

Mr. Brewington moved to continue BOA-09-29 until the September meeting, seconded by Mr. Shell. The Board voted unanimously in favor of the motion.

OLD BUSINESS:

REHEARING

- (a) BOA-09-29: **2408 RETRIEVER LANE** Keith and Sherri Hill request a rehearing based on new evidence concerning a request for an attached screened porch which will encroach 9 feet into a 15-foot rear setback. The variance request was heard and denied at the June 22, 2009 meeting and the request for rehearing was continued from the July 27, 2009 meeting. Section 30-9-6.9(F), Present Zoning-RS-12(CL) , BS-230, Cross Street-Lake Brandt Road. **(CONTINUED TO SEPTEMBER MEETING)**

NEW BUSINESS**VARIANCE**

- (a) BOA-09-30: **3611 CALYX COURT** Raymond and Margaret Foster request a variance from a rear setback requirement. *Violation:* A proposed enclosed screened porch over an existing deck will encroach 3 feet into a minimum 20-foot rear setback. Table 30-4-6-1, Present Zoning-RS-12 (CL), BS-170, Cross Street-Scarlet Haw Drive. **(GRANTED)**

Rawls Howard stated that the applicant is requesting a variance to change a deck to a screened porch which will encroach 3 feet into a 20-foot rear setback. The property is located on the western side of Calyx Court north of Scarlet Haw Drive on zoning map block sheet 170. The applicant is proposing to construct a screened porch addition at the rear of the existing house over an existing deck. The addition will encroach 3 feet into a 20-foot rear setback. The screened porch addition is proposed to be 14 feet x 22 feet for a total area of 308 square feet. This property was part of the recent 2008 City initiated annexation. The property is currently zoned RS-12(CL) (Residential Single Family with Cluster Zoning Development option). The property was eligible to develop using cluster zoning requirements. The lot size and setbacks were reduced to the RS-7 zoning district requirements. The objective of cluster development is to place houses closer together on smaller lots than normally permitted in the zoning district and to place land which would otherwise have been included in private lots into public dedication or common elements for open space. The applicant recently applied for a building permit to cover the deck and it was not approved because the covered structure did not meet the minimum rear setback. The lot contain approximately 8,788 square feet. Only a small portion of the rear of this lot abuts common elements open space. There is another lot abutting to a portion the rear of the applicant's property. (Attached is a GIS Drawing that shows the subject property and the lot lines for the contiguous lot that is adjacent to a rear portion of the applicant's lot). The pictometry and GIS photos clearly indicate that a fence line is established on the adjoining property owner's lot, which is lot #114. There is also a buffer established that according to the plat is partially located on lot #114. A copy of this plat is attached to this staff report, Plat Book 103, Page 147. There are common elements which are located to the west and north contiguous to a portion of the applicant's rear lot line. Rear setbacks may be reduced to fifteen feet if abutting common elements are at least 30 feet in width. The RS-12(CL), Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12(CL) will typically be 3.0 units per acre or less. The lot size and building setbacks are permitted to use the RS-7 requirements.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Margaret Foster, the property owner, was sworn in and stated that she wishes to roof and screen her deck to make a screened-in porch. Her husband is starting to suffer some muscular and skeletal problems and it has been recommended by his doctor that heat therapy may be very beneficial for him. A hot tub has already been installed, but with the sun shining directly on the deck it is just too hot and uncomfortable to enjoy it. There is also a problem with mosquitoes in this area because of the wetlands to the rear of the property. The property at the rear angles at such a degree that it causes the existing porch to encroach in the rear property line restrictions. She has contacted adjoining and her neighbors to the rear and no one expressed any opposition to the request. She

also asked for permission for this construction from the homeowners' association and it was immediately approved by them. She explained that the deck footprint will remain the same.

There was no one speaking in opposition to the request.

After a short discussion, Mr. Brewington moved that in BOA-09-30, 3611 Calyx Court, the findings as submitted by staff be incorporated and that the Zoning Enforcement Officer be overruled and the variance be granted based upon the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the ordinance she can make no reasonable use of her property because, as has been presented by the applicant, there are several circumstances that present very unique challenges, i.e., the excessive heat from the layout of the property, the wetlands at the rear of the property and given the amount of the request, it is rather minor as it relates to the entire amount of the encroachment. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because there is common area behind the property and causes problems with drainage in this particular area and keeps it wet and a breeding ground for mosquitoes. The hardship results from the application of the ordinance to the property because, as previously mentioned, it would encroach 3 feet into the 20 foot setback but because of the lay of the land and the orientation of the property, providing no relief from the sun. The variance is in harmony with the general purpose and intent of the ordinance because it preserves its spirit as there are other properties within the neighborhood that have similar types of structures and it would be a minor addition to the house and would not significantly change the overall features of the house. The granting of the variance assures the public safety and welfare and does substantial justice because there has been no evidence presented that would lead one to believe that simply adding the screened-in porch would harm the safety of the neighborhood or cause a problem with the safety of the house itself. The hardship is not the result of the applicant's own actions because the home was under construction when purchased, therefore, they did not have any input into the construction and the applicant was not in control of placement of the house on the property and not in control of the wetlands that are adjacent to it, seconded by Mr. Turner. The Board voted 4-2 in favor of granting the variance. (Ayes: Parmele, Brewington, Turner, Huffman. Nays: Pinto and Shell.)

- (b) BOA-09-31: **4506 FOXCROFT ROAD** Janet Johnson requests a variance from a rear setback requirement. *Violation:* A proposed covered patio will encroach 9 feet into a minimum 30-foot rear setback. Table 30-4-6-1, Present Zoning-RS-12, BS-79, Cross Street-Starmount Drive. **(DENIED)**

Rawls Howard stated that the applicant is requesting a variance to cover an existing patio. The existing patio is not required to meet the rear setback requirement; however, the structure that is proposed to cover the patio must meet minimum setbacks. The covered patio structure is proposed to encroach 9 feet into a 30-foot rear setback. The property is located on the north side of Foxcroft Road west of Starmount Drive on zoning map block sheet 79. The applicant is proposing to construct a covered structure over an existing patio, which is located at the rear of the existing house. The covered structure will encroach 9 feet into a 30-foot rear setback. The covered patio will be 16 feet x 20 feet for a total area of 320 square feet. Tax records indicate the original house was built in 1959. The rear lot line runs at a severe angle creating a unique shaped lot. The applicant's survey shows a wooden privacy fence is located along the rear lot line. The applicant applied for a building permit (#2009-1021) and on July 7, 2009 the permit was not approved by zoning, due to a

rear setback encroachment. On July 9, 2009, the permit was re-submitted and the rear setbacks for the covered patio were shown to be in compliance; thus the permit was then approved. The size and location of the patio had not changed, only the setback numbers, thus the applicant is requesting a variance for the rear encroachment. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Janet Johnson, the property owner, was sworn in and stated that her request is very similar to that of the previous applicant. She has lived in this house for about four years and the rear door faces the north so the sun is on the deck for the majority of the day, making it very hot and uncomfortable. There was a large tree that provided some shade, but limbs started falling from the tree and she had it taken down in the spring of this year. It was determined that the tree was deteriorating and would have soon died anyway. Even if she replants a tree to replace it, it would take many years for it to grow large enough to sufficiently shade the deck area of her home. She has talked with her neighbors about the proposed construction and no one indicated any opposition. She pointed out that because her property angles from the east it causes an encroachment on the west side of the property. She is only asking for a variance to encroach 9 feet into the 30 foot setback requirement.

There was no one speaking in opposition to the request.

After some discussion, Mr. Turner moved that in regard to BOA-09-31, 4506 Foxcroft Road, the findings as submitted by staff be incorporated and that the Zoning Enforcement Officer be overruled and the variance be granted based upon the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance as a roof over the patio is necessary to replace a tree that was cut down because it was diseased. If the applicant complies with the provisions of the ordinance, she can make no reasonable use of the property because if the ordinance is applied there is a large patio without a roof on it, making it impossible to use the patio area. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because of the unique shape of the property. The hardship results from the application of the ordinance to the property because of the unusual shape of it and how the property was originally built. The hardship is not the result of the applicant's own actions because it is due to the odd shape of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and the granting of the variance assures the public safety and welfare and does substantial justice and would not cause any public harm, seconded by Mr. Brewington. The Board voted 3-3 and the variance was denied. (Ayes: Truner, Brewington and Shell. Nays: Parmele, Pinto and Huffman.)

Chair Pinto explained that a request must receive four (4) favorable votes to be granted. Even if there were only 4 members present, there would be a need for all 4 to vote in favor of the granting of a variance.

- (c) BOA-09-32: **2800 NORTHAMPTON DRIVE** Lynn Skelly requests a variance from the maximum fence height requirement. *Violation:* Portions of an existing fence exceed the maximum height of 7 feet by 1 foot-4 inches along the rear and street side lot lines. Section 30-4-9.6(A), Present Zoning-RS-9, BS-25, Cross Street-Onslow Drive. **(DENIED)**

Rawls Howard stated that the applicant is requesting a variance for portions of an existing privacy fence that exceeds the maximum height of 7 feet by 1 foot-4 inches. The property is located at the

northwestern intersection of Northhampton Drive and Onslow Drive on zoning map block sheet 25. Tax records indicate the dwelling was built in 1964. The applicant is requesting a fence height variance for an existing fence that exceeds the maximum height of 7 feet by 16 inches at the highest fence section. The lot is a corner lot. The fence is located along the side of the property that is adjacent to Onslow Drive and along the rear lot line. The survey submitted by the applicant shows the rear portion of the fence is located on the rear lot line. The fence height varies from 6 feet-4 inches up to 8 feet-4 inches. Ordinance Section 30-4-9.6 (A) *Height* states: *Residential Uses:* Except as provided in this subsection, no fence shall exceed four (4) feet in height within fifteen (15) feet of any public or private street right-of-way. On lots where the rear or side yard adjoins a major thoroughfare or a minor thoroughfare and there is no driveway access and no sight distance interference, no fence shall exceed six (6) feet in height within fifteen (15) feet of the thoroughfare right-of-way. Otherwise, no fence shall exceed seven (7) feet in height. The applicant has made mention that the fence was installed by a previous owner. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Elizabeth Brantley, attorney representing the property owner, was sworn in and presented photos and documents for the Board members' review. She stated that this is a rather confusing case as her client has only owned the property since August 2006. The existing fence was constructed prior to her purchase of the property and completed in May 2006. Her client is involved in litigation with another property owner and the issue in that case is the location of the fence and has nothing to do with the height of the fence. The property owner, Ms. Skelly was unaware of the violation of the ordinance until the filing of that lawsuit in May of 2009. The fence varies in height at several locations because of the topography. At the lowest point it is 6' 4" and at the highest point it is 8' 4". The fence builder hope to keep the fence aesthetically pleasing and even throughout the property as opposed to adjusting the height with the lay of the land in the back yard. She would like to keep the fence as it has been constructed to give her more privacy in her rear yard.

In response to questions, Ms. Averett stated that if the fence is 15 feet from the right-of-way of the side property line, it could be as high as 7 feet tall.

Chair Pinto stated that a letter has been received from Annie Lee McCall who is in opposition to the request. He read the letter into the record.

Speaking in opposition to the request Harry Gordon, 2915 Starmount Farms Drive, was sworn in and presented photos of the subject property for review. He stated that his son has lived in the

house for some time. The subject property was sold to Ms. Skelly and she immediately told about the pending litigation with the previous property owner in regard to the construction of the fence. Ms. Skelly then brought in a fence installer that completed the fence at the front of the property. He presented a copy of a letter that he had sent to the Board members with all the information related to this matter. He pointed out that there was some misinformation previously stated by Ms. Brantley as when the property was owned by the previous owner, Ms. Clark, there was threatened lawsuit, a partial resolution and there was an interior fence that Ms. Skelly had taken down and then completed the now existing fence. He reiterated that Ms. Skelly was also very aware of the fence problem when she purchased the property and proceeded with the fence construction as it is today. Many of the neighbors feel that the fence is very intrusive and causes their property values to go down. He also pointed out that the current property owner can certainly make reasonable use of the property without having a 8 foot fence. He feels that this whole problem could have been avoided if Ms. Skelly had handled it in a proper manner.

In rebuttal, Ms. Brantley stated that the fence was largely completed when Ms. Skelly purchased the property and she completed it and the four posts have been installed. The portion that she completed is not in violation of the ordinance and only the rear portions of the property fence are in violation.

Mr. Brewington pointed out that according to the site map shown, over 50% of the fence is in violation.

Chair Pinto pointed out that it has been established that over 50% of the fence is in violation and he asked Ms. Brantley to explain why no reasonable use can be made of the property but to allow that to continue. Ms. Brantley stated that the property owner would be very exposed and would not be able to enjoy the privacy she is entitled to if the fence is taken down to a height that is within the restrictions.

After some in-depth discussion and questions, Mr. Brewington moved that in regard to BOA-09-32, 2800 Northampton Drive, the findings as submitted by staff be incorporated and that the Zoning Enforcement Officer be upheld and the variance be denied based upon the following: If the applicant complies with the provisions of the ordinance she would be able to make reasonable use of the property as there has been no evidence presented that the fence at 7 foot would make any difference than what was there before, seconded by Mr. Parmele. The Board voted 6-0 in favor of denial of the variance. (Ayes: Parmele, Brewington, Turner, Huffman, Pinto and Shell. Nays: None.)

SPECIAL EXCEPTION

- (a) BOA-09-33: **5 AUGUSTA COURT** Deborah Neal requests a Special Exception as authorized by Section 30-5-2.37(B) to allow a separation of 458 feet from one family care home (6 or less persons) to another family care home (6 or less persons) when 1,320 feet is required. Present Zoning-RS-12, BS-233, Cross Street-Coltsfoot Road. **(DENIED)**

Rawls Howard stated that the applicant is proposing to locate a family care home 458 feet from an existing family care which is located at 7 Wimbledon Lane. The minimum spacing separation requirement is 1,320 feet. It is 862 feet too close. The lot is located at the end of the cul-de-sac on

Augusta Court east of North Church Street on zoning map block sheet 233. It is zoned RS-12 (Residential Single Family-12). The applicant is proposing to locate a family care home (6 or less persons) at 4 Augusta Court. It is approximately 458 feet from an existing family care home, which is located at 7 Wimbledon Lane. The homes are required to be separated by a minimum radius of $\frac{1}{4}$ mile, which is 1,320 linear feet. Business license records reflect that the family care home located at 7 Wimbledon Court is in current operation and required renewals are in compliance. The homes will be separated by other homes, a major thoroughfare (North Church Street), and environmental buffers. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Deborah Neal, the property owner, was sworn in and stated that she wishes to have a group home which would house six elderly and disabled people in the home. She would not do anything to take away from the neighborhood or make the house look like anything other than a single family residence. She plans to sell the house at some point and this is only a temporary situation. She hopes to be able to establish a much larger facility at some time in the near future. The other group home is not easily reached and is not in the same neighborhood as this home. To get to the other group home you would actually have to go out on Church Street and go around to another neighborhood.

Speaking in opposition to the request was Brock Gordon, 4917 Shady Pine Drive and Thomas Little, 4929 Shady Pine Drive, who stated that there are concerns about the house being used as a group home as it would be disruptive to the residential nature of this area. There is also concern that if the applicant moves out, another group home would move in with troubled teenagers, which would cause more problems for the neighbors.

After a short discussion Mr. Pinto moved that in the case of BOA-09-33, 5 Augusta Court, the findings as submitted by staff be incorporated and that the Zoning Enforcement Officer be upheld and the request for a Special Exception be denied based upon the following as it is not in harmony with the general purpose and intent of the ordinance, the Board does not feel that there are sufficient circumstances to waive the requirement that group homes be at least $\frac{1}{4}$ mile apart and the denial of the request would assure public safety and welfare and do substantial justice, seconded by Mr. Brewington. The Board voted 6-0 in favor of the motion to deny. (Ayes: Pinto, Brewington, Turner, Shell, Huffman, Parmele. Nays: None.)

OTHER BUSINESS

1. **Discuss time limitations on rehearing policy**
2. **Discuss changing the monthly meeting time**

Rawls Howard stated that the Rules of Procedure indicate that to be changed, a written request must come before the Board, discussed at that meeting and held over until the next meeting for a final decision to be made.

After some discussion and In response to questions by the Board, Counsel Peterson-Buie stated that according to the written Rules of Procedure, any request for change must be in writing and she felt that until changes are made by the Board, those rules should be followed.

The Board, as a whole, felt that it would be adequate for Board members to receive electronic e-mails notification, which would serve as "written notification" and that the above matters could be considered for final decision as the September meeting.

In regard to the time limitation on rehearings, it was felt that 60 – 90 days would be sufficient. This will be discussed at the September meeting and a final decision will be made.

In regard to changing the monthly meeting time, it was felt that either 4:00 or 5:30 p.m. would come before the Board in September for a final decision.

Counsel Peterson-Buie introduced James (Jim) Clark, who has joined the Legal Department and will serve as Legal advisor to the Planning Department and this Board.

Rawls Howard stated that he had previously mentioned someone from the School of Government to do an updated training for the Board and asked if the Board members are still interested in that. If so, he would contact them and try to get something scheduled in the near future. The Board members responded that they are very interested in this type of training session.

ABSENCES:

The absence of Mr. Pearce, Mr. Strickland and Ms. Trexler were acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 4:38 p.m.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd